

Application No. 10/761,088  
Amendment dated May 7, 2008  
Reply to Office Action of March 20, 2008

### REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action mailed on March 20, 2008, and the references cited therewith.

Claims 1-18, 24, 29-30, and 33-39 are amended, and no claims are canceled or added; as a result, claims 1-39 are now pending in this application.

#### § 112 Rejection of the Claims

Claims 2-17, 30 and 34-39 were rejected under 35 USC § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant has endeavored to amend claims 2-11, 13-17, 30 and 34-39 to overcome the Examiner's 112 rejection thereof. However, Applicant respectfully notes that independent claim 12, as originally submitted, recites "a device" on line 6. Hence, Applicant respectfully submits that subsequent recitations of "the device" (e.g., in dependent claims 13, 15, and 17) have sufficient antecedent basis.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 112 rejection of claims 2-17, 30 and 34-39, as well as those claims that depend therefrom.

#### §103 Rejection of the Claims

Claims 1-6, 8-16, 18, 19 and 21-37 were rejected under 35 USC § 103(a) as being allegedly unpatentable over Manghirmalani et al. (U.S. Patent No. 5,819,028) in view of Buia et al. (U.S. Pub. No. 2004/0078683). Applicant respectfully traverses the rejection as follows.

Applicant does not admit that the Buia reference is indeed prior art and reserves the right to swear behind at a future date. Nonetheless, in the interest of advancing prosecution thereof, Applicant respectfully submits that the elements and limitations of the claims of the present application are patentably distinguishable from the teachings of the Manghirmalani and Buia reference for at least the following reasons.

Application No. 10/761,088  
Amendment dated May 7, 2008  
Reply to Office Action of March 20, 2008

Applicant's independent claim 1, as currently amended, presently recites:

analyze the response information and the unsolicited information, which include information regarding device memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC), according to a set of heuristics to provide a health measurement of the device.

Applicant respectfully submits that the Manghirmalani reference and the Buia reference, either individually or in combination, do not describe, teach, or suggest analyzing response information and unsolicited information, which include information regarding device memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC), according to a set of heuristics to provide a health measurement of the device.

Independent claim 12, as currently amended, presently recites:

receive memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC) information in response to the polling and as unsolicited information initiated by and transmitted from the device; and

apply heuristics to the received memory utilization, buffer utilization, LAN utilization, and CRC information from the polling and unsolicited transmissions collectively to determine a health of the device.

Independent claim 18, as currently amended, presently recites:

analyzing the response information and the unsolicited information, which include information regarding device memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC), according to a set of heuristics to provide a health measurement of the device.

Independent claim 30, as currently amended, presently recites:

receiving memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC) information in response to the polling and as unsolicited information initiated by and transmitted from the device; and

applying heuristics to the received memory utilization, buffer utilization, LAN utilization, and CRC information from the polling and unsolicited transmissions collectively to determine a health of the device and the network.

Application No. 10/761,088  
Amendment dated May 7, 2008  
Reply to Office Action of March 20, 2008

Independent claim 33, as currently amended, presently recites:

analyzing the response information and the unsolicited information, which include information regarding device memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC), according to a set of heuristics to provide a health measurement of the device.

In addition, independent claim 34, as currently amended, presently recites:

means for receiving solicited and unsolicited information from a network device, the unsolicited information initiated by and transmitted from the network device, the solicited and unsolicited information including memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC); and

means for analyzing the received solicited and unsolicited information collectively to provide a health measurement of the network device.

As such, Applicant respectfully submits that the presently claimed invention is neither taught by, nor made obvious in view of, the combination of the Manghirmalani and Buia references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103 rejection on independent claims 1, 12, 18, 30, and 33-34, as currently amended, as well as those claims that depend therefrom.

Claims 7, 17, 38 and 39 were rejected under 35 USC § 103(a) as allegedly being unpatentable over Manghirmalani et al. (U.S. Patent No. 5,819,028) in view of Buia et al. (U.S. Pub. No. 2004/0078683) as applied to claims 6, 16 and 37 above and further in view of Rayes et al. (U.S. Pub. No. 2005/0086502). Applicant respectfully traverses the rejection as follows.

Applicant does not admit that the Buia and Rayes references are indeed prior art and reserves the right to swear behind at a future date. Nonetheless, in the interest of advancing prosecution thereof, Applicant respectfully submits that the elements and limitations of the claims of the present application are patentably distinguishable from the teachings of the Manghirmalani, Buia and Rayes references for at least the following reasons.

Application No. 10/761,088  
Amendment dated May 7, 2008  
Reply to Office Action of March 20, 2008

Claims 7, 17, and 38-39 depend from independent claims 1, 12, and 34, respectively. As described above, Applicant respectfully submits that independent claims 1, 12, and 34 are in condition for allowance over Manghirmalani and Buia. Applicant respectfully submits that the Rayes reference does not cure the deficiencies of the Manghirmalani and Buia references.

That is, Applicant respectfully submits that with regard to the present invention, under KSR or otherwise, the Rayes reference does not describe, teach, or suggest:

analyze the response information and the unsolicited information, which include information regarding device memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC), according to a set of heuristics to provide a health measurement of the device.

as recited in Applicant's independent claim 1, as currently amended. Nor does the Rayes reference describe, teach, or suggest:

receive memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC) information in response to the polling and as unsolicited information initiated by and transmitted from the device; and

apply heuristics to the received memory utilization, buffer utilization, LAN utilization, and CRC information from the polling and unsolicited transmissions collectively to determine a health of the device.

as recited in Applicant's independent claim 12, as currently amended. In addition, the Rayes reference does not describe, teach, or suggest:

means for receiving solicited and unsolicited information from a network device, the unsolicited information initiated by and transmitted from the network device, the solicited and unsolicited information including memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC); and

means for analyzing the received solicited and unsolicited information collectively to provide a health measurement of the network device.

as recited in Applicant's independent claim 34, as currently amended.

Application No. 10/761,088  
Amendment dated May 7, 2008  
Reply to Office Action of March 20, 2008

Accordingly, Applicant respectfully requests reconsideration and allowance of dependent claims 7, 17, and 38-39.

Claim 20 was rejected under 35 USC § 103(a) as allegedly being unpatentable over Manghirmalani et al. (U.S. Patent No. 5,819,028) in view of Buia et al. (U.S. Pub. No. 2004/0078683) as applied to claim 19 above and further in view of Shevenell et al. (U.S. Pub. No. 2004/0122645). Applicant respectfully traverses the rejection as follows.

Applicant does not admit that the Buia and Shevenell references are indeed prior art and reserves the right to swear behind at a future date. Nonetheless, in the interest of advancing prosecution thereof, Applicant respectfully submits that the elements and limitations of the claims of the present application are patentably distinguishable from the teachings of the Buia and Shevenell references for at least the following reasons.

Claim 20 depends indirectly from independent claim 18. As described above, Applicant respectfully submits that independent claim 18 is in condition for allowance over Manghirmalani and Buia. Applicant respectfully submits that the Shevenell reference does not cure the deficiencies of the Manghirmalani and Buia references. That is, Applicant respectfully submits that with regard to the present invention, under KSR or otherwise, the Shevenell reference does not describe, teach, or suggest:

analyzing the response information and the unsolicited information, which include information regarding device memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC), according to a set of heuristics to provide a health measurement of the device.

as recited in Applicant's independent claim 18, as currently amended.

Accordingly, Applicant respectfully requests reconsideration and allowance of dependent claim 20.

Application No. 10/761,088  
Amendment dated May 7, 2008  
Reply to Office Action of March 20, 2008

### CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney Edward J. Brooks III at (612) 236-0120 to facilitate prosecution of this matter.

At any time during the pendency of this application, please charge any additional fees or credit overpayment to the Deposit Account No. 08-2025.

CERTIFICATE UNDER 37 CFR 81.8: The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent and Trademark Office facsimile number (571) 273-8300 on this 7 day of May, 2008.

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